IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

CRP.No. 740 of 2005

CMA.32/1999 of DISTRICT COURT, KASARAGOD

REVN. PETITIONER: APPELLANT:

K. THAJUDDEEN, AGED 36 YEARS,
S/O. ABOOBACKER, PALLIPATH HOUSE, IRIKKUR P.O.,
KANNUR DISTRICT. (REP. BY HIS POWER OF ATTORNEY
PALLIPPATH ABOOBACKER, S/O. KAMAL, AGED 61 YEARS,
IRIKKUR AMSOM, DESOM, THALIPARAMBA TALUK,
KANNUR DISTRICT.

BY ADV. SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.R.O.MUHAMED SHEMEEM

RESPONDENTS: RESPONDENTS:
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1. THE AUTHORISED OFFICER AND DIVISIONAL FOREST OFFICER, KANNUR DIVISION, KANNUR.

2. FOREST RANGE OFFICER, KASARAGOD.

3. STATE, REPRESENTED BY GOVERNMENT PLEADER, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.M.P.PRAKASHAM

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P. NO. 740 OF 2005

Dated this the 7th day of December, 2007

O R D E R

The petitioner is the registered owner of mini lorry, bearing Registration No.KL-7/G-3639. The petitioner challenges the judgment dated 31.3.2005 in C.M.A.No.32 of 1999, on the file of the District Court, Kasaragod, by which the Appellate Court confirmed the order of the Authorised Officer under the Kerala Forest Act confiscating the vehicle and the teak logs transported in the said vehicle, under Section 61A of the Kerala Forest Act (hereinafter referred to as 'the Act').

2. In the night of 16.7.1997, the Sub Inspector of Police, Adhur, seized the mini lorry mentioned above on finding that the vehicle was being used for transporting two wooden logs (teak), which is a forest produce. There was no document authorising transport of the teak logs. After seizing the vehicle, the Sub Inspector of Police hand over the vehicle to the forest officials and a report was also submitted. The vehicle was produced before the Divisional Forest Officer, Kannur, who was the Authorised Officer under Section 61A of the Act. An enquiry was conducted by the Range Officer and a report was submitted to the Authorised Officer.

3. The owner of the vehicle got possession of the vehicle as per

the order passed by this Court in O.P.No.7972 of 1998, on furnishing bank guarantee. Proceedings were initiated by the Authorised Officer under Section 61A of the Act. Notice was issued to the petitioner, the driver of the vehicle and the other persons involved in the illegal transport of the forest produce. On receipt of the notice, the petitioner submitted an application for release of the vehicle.

4. The Authorised Officer considered the statements of the driver and other persons who were involved in the offending act, the report submitted by the forest officials and other facts and circumstances and it was held that the vehicle was liable to be confiscated under Section 61A of the Act. It was found by the Authorised Officer that illegal transportation of forest produce was established in the case. It was also found that the case put forward by the owner of the vehicle that he was unaware of the illegal transportation of timber, is unbelievable and against truth. The Authorised Officer took note of the fact that the owner of the vehicle had not taken any action against the driver of the vehicle for unauthorised use of the vehicle. According to the Authorised Officer, this is one circumstance which would indicate that the owner of the vehicle was aware of the illegal transportation of timber. The finding rendered by the Authorised Officer is that the timber belongs to the Government and that it was removed from the nearby forest or the land belonging to the

Government. The Authorised Officer held that the vehicle was liable to be confiscated.

5. On appeal by the petitioner, the learned District Judge considered the facts and circumstances of the case and the materials on record and heard the counsel for the appellant. The findings and conclusions arrived at by the Authorised Officer were confirmed by the court below after considering the materials on record. The contention that no sufficient opportunity was afforded to the petitioner to appear before the Authorised Officer was negatived by the court below. The court below also took note of the fact that the revision petitioner, who is the owner of the vehicle, had filed a statement that he had already disposed of the vehicle. However, he got the vehicle released in his favour by filing a Writ Petition before the High Court. It was found that the appellant before the court below (revision petitioner herein) had no subsisting interest in respect of the vehicle. The finding by the Authorised Officer that the timber satisfied the definition of the forest produce was confirmed and it was found that the ingredients of Section 61A are attracted. It is not established by the revision petitioner that he had taken reasonable and necessary precautions to see that no forest offence is committed, as provided in sub-section (2) of Section 61B.

6. Learned counsel for the petitioner submitted that the order passed by the Authorised Officer would indicate that rival claims were put forward by the Forest Range Officer, Sulliya and the Forest Range Officer, Puthur that the timber was removed from the forest within their respective jurisdictions. The counsel pointed out that it is not established from where the trees were cut and in spite of specific directions, a joint verification by the Range Officers concerned was not conducted. According to the counsel for the petitioner, this itself is sufficient to hold that the ingredients of Section 61A are not made out. I am unable to accept this contention. Whether it is cut from a particular forest or not, that does not take away the case out of the purview of Section 61A. The question is whether the transportation as alleged was in respect of a forest produce. The timber involved in the case is teak. For transportation of teak, necessary pass issued by the Forest Officials was necessary. Necessary marks shall also be put on the timber by the Forest Officials. At the time of seizure, the driver of the vehicle or the persons who were found in the vehicle could not produce any document to establish that the transportation of timber was authorised and necessary pass for the same was issued by any competent authority. The revision petitioner has no case that the timber was transported with valid pass and other supporting documents. There is also no case that the timber was not being transported in the vehicle. The statement given by one Mohammed before the Range Officer would

indicate that the timber belonged to one Zainul Abidheen Thangal and it was loaded from the side of the public road. He also stated that he was told that Zainul Abidheen Thangal purchased the same from some other person. The driver of the vehicle also gave statement before the Range Officer that the timber belongs to Zainul Abidheen Thangal. The timber was loaded from the side of the public road. The driver was not aware of the place from where the timber was cut. The driver has not taken any precaution to see that the timber loaded in the vehicle was of lawful origin and that the transportation of the same was legal and proper. The statement of Zainul Abidheen Thangal would indicate that he purchased the timber from one person belonging to Mulleria. The name and address of that person was not disclosed. In short, none of the persons who were examined by the Range Officer and none of the persons who gave statement before the Range Officer did disclose the correct facts. Simply because the stump of the tree was not located or simply because that it is not established that the timber was cut from the forest within the territorial jurisdiction of a particular Forest Range Office, it cannot be said that Section 61A is not attracted.

7. The Authorised Officer and the learned District Judge have considered all the facts and circumstances of the case in great detail and held that the vehicle is liable to be confiscated. I do not see any ground to

interfere with the concurrent findings of the authorities below. I concur with the the conclusions and reasonings made by the authorities below.

The Civil Revision Petition lacks merits and it is accordingly dismissed. No order as to costs.

(K.T.SANKARAN)
Judge

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